IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY E. MACK,

Plaintiff,

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EDMUND G. BROWN, et al., Defendants.

No. C 12-02517 CW (PR)

Appeal No. 12-17347

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS STATUS ON APPEAL

The Court granted Plaintiff, a state prisoner proceeding pro se, leave to proceed in forma pauperis (IFP) in this civil rights Upon review of the allegations in the complaint, the Court found the complaint fails to state a claim upon which relief may be granted because Plaintiff seeks a declaratory judgment that his conviction is unlawful and immediate release from confinement. Such relief is available only in federal habeas corpus. Court dismissed the complaint without prejudice to Plaintiff's filing a habeas petition after exhausting state remedies.

Plaintiff has filed a notice of appeal. The United States Court of Appeals for the Ninth Circuit has referred the case back to this Court for a determination whether Plaintiff's IFP status should be revoked. Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party granted leave to proceed IFP in the district court may continue in that status on appeal unless the district court certifies that the appeal is not taken in good The Court concludes that Plaintiff's appeal is taken in good faith. Accordingly, leave to proceed IFP on appeal is GRANTED.

The Clerk of the Court shall serve a copy of this Order on

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For the Northern District of California

United States District Court

Plaintiff	and	on	the	Court	of	Appeals.

IT IS SO ORDERED.

DATED: 11/6/2012

CLAUDIA WILKEN

United States District Judge